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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

QUINNTIN DENTON,

Defendant and Appellant.

B209885

(Los Angeles County
Super. Ct. No. TA074786)

THE COURT:*

Quinntin Denton (appellant) appeals from the order revoking probation after he previously pled no contest to possessing cocaine base for sale (Health & Saf. Code, § 11351.5) and admitted that he had a prior enumerated narcotics conviction (Health & Saf. Code, § 11370.2, subd. (a)). During the probation violation proceedings, the trial court found that appellant had failed to appear pursuant to court order and found appellant in violation of probation. It then revoked probation and executed the five-year prison term it had previously imposed and stayed.

We appointed counsel to represent him on this appeal.

* BOREN, P. J., DOI TODD, J., CHAVEZ, J.

After examination of the record, counsel filed an “Opening Brief” in which no issues were raised.

On November 19, 2008, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider.

On December 1, 2008, appellant filed a handwritten response. In his letter, he complains that: (1) when he was required to appear in court, he was “at the hospital” and has the paperwork to prove it; (2) he is unaware of the nature of his previous probation violations and had no opportunity to dispute them; and (3) he would like to know why a prison term was imposed, in lieu of a term in the county jail. He (4) asks this court to consider that he was crime free for over four years preceding revocation, and (5) he requests presentence credits for the entire period he was involved in this case, from his arrest on April 15, 2004, to the date of his arrest on the last bench warrant, May 15, 2008.

I. Background

On January 5, 2005, appellant entered a no contest plea to possessing cocaine base for the purpose of sale. In exchange for the plea, the trial court promised him delayed sentencing and a prison term of three years. The delayed sentencing would give appellant an opportunity to demonstrate to the trial court that he was entitled to a grant of probation. The trial court informed appellant at the time of the plea that the trial court was making no promises to grant probation.

The facts underlying the plea were that in June 2002, in an unrelated case, appellant was convicted of possessing base cocaine. Eventually, in that case, he was committed to state prison. In February 2004, he was paroled. On April 15, 2004, police officers who knew appellant observed him associating with a gang member, and they arrested him for a parole violation. On his person, the officers found a large amount of cocaine base that had been packaged for sale. Appellant also had a large amount of cash

in small denominations. The large quantity of cocaine base was the basis for the current conviction.¹

Subsequently, on August 17, 2005, the trial court sentenced appellant in the instant case. At sentencing, the trial court offered two options. Appellant could agree to an immediate three-year prison term. Or, the trial court would grant appellant three years of formal probation. However, this latter alternative required the imposition of a five-year prison term that would be executed upon a violation of probation. Appellant chose the latter option and was granted probation.

After probation was granted, the probation department had appellant return to court several times concerning potential probation violations. On the last occasion, on June 20, 2007, the trial court preliminarily revoked probation and issued a bench warrant.

The probation report dated September 28, 2007, set out the following information. The probation officer indicated that following the original sentencing on August 17, 2005, appellant reported to his probation officer only during the following months: August 2005, September 2005, October 2005 and November 2005, February 2006, November 2006 and December 2006. Appellant had had a number of contacts with law enforcement and had suffered a new misdemeanor conviction. In August 2005 and June 2007, he was found in violation of the conditions of his parole and was returned to serve terms in state prison.

The probation officer indicated that appellant had not reported with any consistency because of arrests and parole violations. The probation officer said that appellant was “criminally sophisticated,” and neither his parole status nor his suspended prison sentence had impressed appellant sufficiently to cause him to comply with the

¹ The probation report prepared for the original sentencing indicates that appellant has an aggravated juvenile history that includes a California Youth Authority commitment.

terms of his probation. The probation officer concluded that appellant was not benefiting from probation and recommended revocation.

After giving appellant notice that the violation of probation consisted of his failure to appear in court after an order to return on March 28, 2008, on June 3, 2008, the trial court held a formal probation violation hearing. The prosecutor told the trial court that further evidence from the prosecution was unnecessary as the failure to appear was established by the trial court's own records.

The trial court put on the record that the trial court and the parties had had a long discussion the previous day concerning whether there was a violation. The trial court said that appellant had failed to appear on January 30, 2008, and that a bench warrant was issued. It was recalled on February 11, 2008. A violation hearing was scheduled at that time, and appellant was ordered to return to court on March 28, 2008. He failed to appear on that date. He next appeared in court on May 19, 2008, in custody on the bench warrant. At that time, the violation hearing was rescheduled for June 2, 2008.²

Trial counsel explained to the trial court that appellant had been in custody on a parole violation from November 2007 through January 29, 2008. Appellant was released from custody and reported to his probation officer on January 30, 2008, or on February 1 or 2, 2008. He did not realize that he was required to return to the trial court. In February 2008, appellant had "walked in," and the bench warrant was recalled.

² The minute orders show the following. On January 29, 2008, appellant appeared in custody in the instant matter, and the bench warrant was recalled. The matter was continued for violation proceedings, and appellant failed to appear on January 30, 2008. Probation was preliminarily revoked, and a bench warrant issued. On February 11, 2008, appellant appeared in custody, the bench warrant was recalled, appellant was granted an own recognizance release, and a violation hearing was again scheduled. On March 28, 2008, appellant failed to appear, and another bench warrant issued. On May 16, 2008, appellant appeared before the court in custody, and the bench warrant was recalled. The matter was continued to May 19, 2008, for trial counsel's appearance. Thereafter appellant remained in custody.

The probation violation matter was continued from time to time to March 28, 2008. On March 28, 2008, trial counsel was in the hospital after a bicycling accident that left him severely injured. Trial counsel explained that appellant had discovered that trial counsel was hospitalized and consequently did not appear. Trial counsel claimed that appellant had misunderstood “the importance of [trial counsel] not being able to be here.”

Thereafter, trial counsel communicated telephonically with appellant and his wife. Appellant’s wife was briefly hospitalized. Appellant told his trial counsel that he was reluctant to appear because he was “scared.” Trial counsel was unsuccessful in persuading appellant to turn himself in. Trial counsel personally was unable to make courtroom appearances after his accident until the middle of or late April 2008. Appellant was arrested on the bench warrant in May 2008.

Trial counsel explained that after his original sentencing in August 2005 in this case, appellant had had three “internal” parole violations that had resulted in the service of additional prison terms: (1) appellant had been apprehended associating with gang members; (2) he had moved out of the county to live with his family in San Bernardino; and (3) he had failed to comply with his parole officer’s directions to live at a particular location. Trial counsel offered in mitigation that appellant had had no new charges filed against him during the four to five years since the instant arrest.

Trial counsel conceded that the trial court had discovered in the court file another, older failure to appear. Trial counsel argued that despite appellant’s failure to fulfill all the conditions of his probation, appellant had managed to stay crime free for over four years. Counsel urged that this accomplishment provided a sufficient reason to continue appellant on probation.

The prosecutor urged revocation. She argued that appellant had not truly changed his behavior and that he was gaming the system.

The trial court found appellant in violation of probation. The trial court commented that the probation report indicated that contrary to trial counsel’s claims, appellant had suffered a number of arrests. Also, he had repeatedly violated his parole

during the same period. Appellant had paid only \$75 toward his \$3,000 probation financial obligations, and he was not reporting to the probation officer as required. He had been a “miserable failure” on probation.

During its comments, the trial court acknowledged that, as trial counsel had pointed out, all that was formally at issue concerning a violation was the March 28, 2008, failure to appear. And, appellant had not appeared as ordered.

The trial court ordered probation revoked and executed the five-year term in state prison.

After the execution, the trial court inquired about presentence credits. Trial counsel indicated that on August 17, 2005, the trial court had computed that appellant was entitled to 279 days of credit. At execution, appellant was requesting an additional 88 days of credit for the period of his incarceration between November 3, 2007, and January 29, 2008. Also, trial counsel claimed that he was entitled to 30 days of local and conduct credits for his 20 days of custody after his May 19, 2008, arrest.

The trial court awarded appellant 397 days of presentence credit, consisting of 299 days of local custody credit and 98 days of conduct credit.

II. The Analysis

A decision to revoke probation has two distinct components: (1) the “retrospective factual question whether the probationer has violated a condition of probation” and (2) the “discretionary determination by the sentencing authority [concerning] whether violation of a condition warrants revocation of probation.” (*Black v. Romano* (1985) 471 U.S. 606, 611.) The decision whether to revoke probation is subject to the sound discretion of the trial court. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 442-445.) That discretion is quite broad, and this court will interfere with the trial court’s finding on a revocation of probation only in a very extreme case. (*Id.* at p. 443.)

Appellant’s complaint that he was “at the hospital” does not require that this court set aside the trial court’s finding of a violation. At the hearing, appellant’s trial counsel conceded that appellant had no valid excuse for his nonappearance on March 28, 2008.

Appellant presented no testimony or other evidence at that time supporting his claim that he had a valid excuse for the failure to appear. If appellant had exonerating evidence, the time to present it was at the hearing. The evidence at the hearing supports the trial court's finding of a violation.

Appellant asserts that he is unaware of any previous probation violations and had no opportunity to dispute them. We interpret his assertion as a complaint that he was denied due process. Prior to the hearing, appellant was given notice that the issue of the violation concerned only whether he had failed to appear on March 28, 2008. Consequently, there was no lack of notice and no denial of due process. (See *Black v. Romano, supra*, 471 U.S. at pp. 611-612.) Once the trial court determined that appellant had failed to appear without a valid excuse and that he was in violation of the conditions of his probation, the trial court was then authorized to address the issue of revocation. At this latter phase of the procedure, the trial court was entitled to consider appellant's overall performance on probation, including any prior failures to appear and whether appellant was apparently gaming the system, to determine whether to revoke probation and to execute the previously-imposed term of imprisonment.

Insofar as appellant asserts in mitigation he had no new felony convictions while on probation and he inquires concerning why he was not given county jail time, such decisions were entirely within the discretion of the trial court. On this record, it was apparent that appellant was ignoring the trial court's orders and his probationary obligations, as well as the parole and probation authorities. He was continuing to do exactly as he pleased, letting nothing interrupt his criminal lifestyle. In the circumstances, the trial court had the discretion to impose the prison term, in lieu of continuing appellant on probation or imposing a brief term in the county jail.

Penal Code section 2900.5, subdivision (b), limits presentence credit to custody "attributable to proceedings related to the same conduct for which the defendant has been convicted." (See *People v. Pruitt* (2008) 161 Cal.App.4th 637, 641-648 (rev. den.).) Supervised probation is not the sort of confinement that entitles a probationer to

presentence credit. Appellant is not entitled to credit against his sentence for periods he was confined in county jail or in prison related to parole. (*People v. Bruner* (1995) 9 Cal.4th 1178, 1193-1194; *People v. Shabazz* (2003) 107 Cal.App.4th 1255, 1257-1258; *People v. Purvis* (1962) 11 Cal.App.4th 1193, 1196-1197 [defendant bears burden of demonstrating entitlement to credit].)

We have examined the entire record and are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The order under review is affirmed.

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